

### **REMARKS**

Claims 17-31 are pending in this Application. By this Reply, Applicants amended claims 17, 23, 24, 26, 29 and 30. Accordingly, claims 17-31 remain at issue following this Reply.

In the Office Action the Examiner rejected: claims 24-26 under 35 U.S.C. §112; claims 17-29 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,788,630 issued to Furnish (“Furnish”); and claims 30-31 under 35 U.S.C. §103(a) as being unpatentable over Furnish in view of U.S. Publication No. 2002/0177754 to Phillips (“Phillips”). Applicants respectfully traverse these rejections.

In view of the Amendments and Remarks herein, Applicants believe the present application is in condition for allowance and respectfully requests notice of same.

#### **Rejection Under 35 U.S.C. §112**

The Examiner rejected claims 24-26 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Applicants have amended claims 24 and 26 to rectify the antecedent basis issue. Accordingly, the Applicants respectfully submit that the Examiner’s §112 rejection is moot.

#### **Rejection Under 35 U.S.C. §102(b)**

The Examiner rejected claims 17-29 under 35 U.S.C. §102(b) as being anticipated by Furnish. The Examiner asserts Furnish discloses all the features of these claims. In light of the amendments, which were discussed with the Examiner during the telephonic interview, Applicants respectfully traverse these rejections and submit that the amended claims are patentable over the cited art.

Applicants have amended independent claim 17 to recite that the leg of the surgical retractor has a **retractor blade connector head mount**. Additionally, Applicants have amended independent claim 29 to recite that the leg has “**a retractor blade connector head opening**.” Finally, Applicants have amended independent claim 30 to recite that the leg of the surgical retractor, which is pivotally connected to the member and extends cantilevered away from the slot, has a **retractor blade connector head mount**, and that the nut on the threaded shaft is **located between the first and second projections**.

As discussed during the interview with the Examiner, the retractor blade connector head mount on the leg of the claimed surgical retractor is provided to receive a connector head of a retractor blade. This amendment is made to clarify the type of mount, and is not made to narrow the claim. Specifically, the functional feature of the mount (i.e., “for receiving a connector head of a retractor blade”) was previously present in the claim prior to the amendment.

During the telephonic interview with the Examiner on December 18, 2006, the Examiner acknowledged that none of the cited prior art references disclosed a retractor blade connector head mount on a cantilevered leg of surgical retractor. Accordingly, Applicants respectfully submit that the claims are presently patentable over all cited art. Further, Applicants respectfully submit that an additional search is not necessary as the claims previously recited the function of the mount, and presumably any prior search would have encompassed this feature. However, if the Examiner believes a further search is necessary Applicants request that any subsequent action, if the Examiner believes one to be necessary, be made non-final.

It is also noted that the Applicants have further amended claim 24 to recite that the first and second projections on the leg form a U-shape, and also further amended claim 30 to recite that the nut on the threaded shaft is located between the first and second projections. Such structure was identified by the Examiner during the interview as not being disclosed in the prior art references.

In order for a reference to act as a § 102 bar to patentability, the reference must teach each and every element of the claimed invention. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771 (Fed. Cir. 1983). As discussed during the interview, Applicants respectfully submit that Furnish does not disclose each and every element of any independent claim, and as such the claims are not anticipated by Furnish. Accordingly, Applicants respectfully submit that all pending claims are patentable as presented.

### **Rejection Under 35 U.S.C. §103**

The Examiner rejected claims 30 and 31 under 35 U.S.C. §103(a) as being unpatentable over Furnish in view of Phillips. Applicants respectfully traverse this rejection.

Under 35 U.S.C. §103(c), subject matter developed by another person which qualifies as prior art only under one or more of Section 102(e), (f), or (g) shall not preclude patentability

under Section 103 where the subject matter of the prior art patent and the application at issue were commonly owned or under an obligation of assignment to the same entity at the time the invention claimed in the application was made. Here, the cited Phillips reference qualifies as prior art only under one or more of Section 102(e), (f), or (g), and the subject matter of the cited Phillips reference and the present application were either commonly owned or under an obligation of assignment to the same entity (Boss Instruments Limited) at the time the invention claimed in the present application was made. A copy of the Assignments of the present application to Boss Instruments. by the inventors Burns P. Phillips and Larry Griffith, as well as a copy of the Assignment from the inventor of the cited Phillips reference to Boss Instruments, are attached with this Reply. Accordingly, use of the Phillips reference in an obviousness type rejection is improper. As such, there are no proper rejections of claims 30 and 31 in the present action, and thus Applicants submit that Claims 30 and 31 are patentable as submitted.

Additionally, in the present Reply Applicants have amended claim 30 to recite that the leg has a “retractor blade connector head mount” for receiving a connector head of a retractor blade, and that a “nut [is] located between the first and second projection[s]” on the leg. As discussed during the telephonic interview, the cited references do not disclose “a retractor blade connector head mount” to allow a retractor blade to be connected to the leg. Additionally, as discussed during the telephonic interview, the cited references do not disclose a nut located between projections on the leg. Accordingly, Applicants respectfully submit that claims 30 and 31 are patentable as amended.

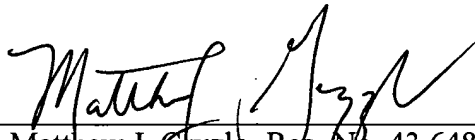
**CONCLUSION**

In light of the foregoing, Applicants respectfully request reconsideration and allowance of claims 17-31. The Commissioner is authorized to charge any additional fees or credit any overpayments associated with this Amendment to Deposit Account 23-0280. Applicants further invite the Examiner to contact the undersigned representative at the telephone number below to discuss any matters pertaining to the present Application.

Respectfully submitted,

Dated: December 20, 2006

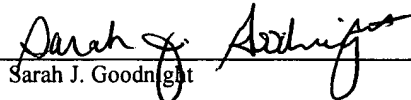
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**CERTIFICATE OF MAILING (37 C.F.R. § 1.8a)**

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service, with first class postage prepaid, in an envelope addressed to: MAIL STOP AMENDMENT, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 20, 2006.

  
Sarah J. Goodnight